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March 22, 2011

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VIA ELECTRONIC FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: GNP Rly, Inc. Petition for Exemption, STB Finance Docket No. 35407;

**GNP Rly, Inc. Petition to Vacate NITU or Abandonment, STB Docket Nos. AB-6
(Sub. No. 463X) and AB-6 (Sub. No. 465X)**

**The City of Redmond's Petition for Leave to File a Supplemental Response to GNP
Rly, Inc's Two Pending Motions for Protective Orders**

Dear Ms. Brown:

Please find enclosed the City of Redmond, Washington's Petition for Leave to File a Supplemental Response to GNP Rly, Inc's Two Pending Motions for Protective Orders and Redmond's accompanying Response. If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Hunter Ferguson".
Hunter Ferguson
Attorney for City of Redmond, Washington

cc: Parties of Record

70600264.1 0058059-00001

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-6 (Sub-No. 463X)

229022

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Redmond Spur, MP 0.00 to MP 7.30)**

STB Docket No. AB-6 (Sub-No. 465X)

229023

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Woodinville Subdivision, MP 11.25 to MP 23.80)**

STB Finance Docket No. 35407

229021

**GNP RLY INC. – ACQUISITION AND OPERATION EXEMPTION – REDMOND SPUR
AND WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502**

**THE CITY OF REDMOND'S
PETITION FOR LEAVE TO FILE A
SUPPLEMENTAL RESPONSE TO
GNP'S TWO PENDING MOTIONS FOR
PROTECTIVE ORDERS**

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Attorneys for the City of Redmond, Washington

March 22, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-6 (Sub-No. 463X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Redmond Spur, MP 0.00 to MP 7.30)**

STB Docket No. AB-6 (Sub-No. 465X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Woodinville Subdivision, MP 11.25 to MP 23.80)**

STB Finance Docket No. 35407

**GNP RLY INC. – ACQUISITION AND OPERATION EXEMPTION – REDMOND SPUR
AND WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502**

**THE CITY OF REDMOND'S
PETITION FOR LEAVE TO FILE A
SUPPLEMENTAL RESPONSE TO
GNP'S TWO PENDING MOTIONS FOR
PROTECTIVE ORDERS**

Two motions for protective orders filed by GNP Railway, Inc. ("GNP") are currently pending before the Board.¹ The City of Redmond, Washington ("Redmond") and King County, Washington ("County") previously responded to both motions and opposed the form of

¹ See GNP Rly Inc.'s Motion for Protective Order (filed October 27, 2010); GNP Rly Inc.'s Motion for Protective Order (filed December 15, 2010).

protective order proposed therein by GNP.² Those motions have been materially affected by recent filings in the involuntary Chapter 11 bankruptcy proceedings concerning GNP. Although GNP itself filed the pertinent bankruptcy pleadings, GNP has not apprised the Board of those pleadings' impact on its two pending motions for protective orders. Accordingly, to provide the Board with a complete record,³ Redmond requests leave to file the attached supplemental response based on these recent developments.

² See Reply of King County, Washington to Motion of GNP Rly, Inc. for Protective Order (filed November 9, 2010); The City of Redmond's Reply to GNP Rly, Inc.'s Motion for Protective Order (filed November 12, 2010); Reply of King County, Washington to Motion of GNP Rly, Inc., for Protective Order (filed January 3, 2011)

³ See *BNSF Railway Company — Discontinuance of Trackage Rights Exemption — In Peoria and Tazewell Counties, Ill.*, STB Docket No. AB 6 (Sub-No. 470X), slip op. at 1 (STB served June 4, 2010) (noting that supplemental pleadings may be filed to complete the factual record); *San Joaquin Valley Railroad Company — Abandonment Exemption — In Tulare County, CA*, STB Docket No. AB-398 (Sub No. 7X), slip op. at 1 (STB served June 6, 2008) (accepting "supplemental filings in the interest of a more complete record").

**THE CITY OF REDMOND'S
SUPPLEMENTAL RESPONSE TO
GNP'S TWO PENDING MOTIONS FOR
PROTECTIVE ORDERS**

I. BACKGROUND

In its two motions for protective orders, GNP proposed creating three tiers of information and corresponding restrictions on access thereto: (1) public information reviewable by anyone, (2) "Confidential" information reviewable only by parties and their agents, and (3) "Highly Confidential" information reviewable only by parties' outside counsel or consultants.⁴ GNP has designated two documents as "Highly Confidential" – its RRIF loan application and its memorandum of understanding ("MOU") with potential investors.

Both Redmond and the County opposed GNP's proposal to deny regional decisionmakers access to documents filed by GNP. As Redmond and the County argued earlier, GNP's proposed restrictions are unnecessary because the regional governments interested in these proceedings are not commercial competitors of GNP, have, at least in Redmond's case, already reviewed the RRIF loan application with GNP's permission, and should not be put at risk of violating a protective order by discussing GNP's filings with counsel.⁵ Accordingly, Redmond

⁴ See generally GNP's Motions for Protective Orders cited *supra* at note 1.

⁵ See generally Redmond and King County's Responses to GNP's Motions for Protective Orders cited *supra* at note 2.

and the County proposed an alternative form of protective order that would not deny government decisionmakers access to documents produced by GNP.⁶

In reply, GNP agreed that its proposed protective order was overly restrictive with respect to information concerning rail cost estimates.⁷ But it maintained that to protect the identities of unnamed investors, no aspect of its MOU could be disclosed to the regional governments.⁸

II. RECENT DEVELOPMENTS

Recent developments in GNP's Chapter 11 proceedings have exposed the MOU and its participants to public scrutiny. On February 11, 2011, GNP filed a complete copy of the MOU in the bankruptcy proceedings.⁹

The MOU has also been disclosed and analyzed in a variety of other public forums. The City Council of Bellevue, Washington discussed the MOU in public meetings held earlier this month. Those meetings and the terms of the MOU have been covered extensively by local news

⁶ *See id.* Attached hereto as Exhibit 1 is a copy of the form of protective order proposed previously proposed by Redmond and the County.

⁷ *See* GNP Rly Inc.'s Reply to King County's Response to Motion for Protective Order at 3 (filed January 10, 2011).

⁸ *See id.* at 4.

⁹ *See* Declaration of Thomas Payne in Support of Motion for Order Requirement Petitioners to File Bond ("Payne Dec.") at ¶ 40 (filed Feb. 11, 2011 as Dkt. 20-1 in *In re GNP Rly, Inc.*, No. 11-40829-BDL (Bank. W.D. Wash.)) (attached hereto as Exhibit 2).

media.¹⁰ The region's largest newspaper – the Seattle Times – has published a full copy of the MOU on its Web site.¹¹

Particularly significant are the recent revelations that the MOU is no longer in force. According to the declaration of GNP Chairman Thomas Payne filed in the bankruptcy proceedings, the MOU has been *suspended*.¹² Kevin R. Wallace, a party to the MOU and a member of the Bellevue City Council, stated in a public letter that the MOU has been “terminated.”¹³

III. ARGUMENT

Redmond still supports entry of the protective order that it submitted to the Board on November 12, 2010. But whatever rationale that might have existed for restricting regional decisionmakers' access to the MOU and RRIF loan application is now gone. Because of its own actions, GNP can no longer claim that the MOU requires any protection. All of the details are now public, and GNP's investors are now well-known. More significantly, the public facts indicate that the MOU has been terminated. There is nothing left to protect.

Likewise, there is no need to restrict access to the RRIF loan application as proposed by GNP. The redacted portions of the RRIF loan application concern rail operations costs and

¹⁰ See, e.g., Keith Ervin, *Wallace welcomes inquiry on GNP ties*, SEATTLE TIMES, Mar. 14, 2011 (attached hereto as Exhibit 3).

¹¹ See Keith Ervin, *Was rail deal conflict of interest for Bellevue official?*, SEATTLE TIMES, Mar. 8, 2011 available at <http://seattletimes.nwsource.com/html/home/index.html> (last visited March 21, 2011). The online version of this article contains the full-text of the MOU.

¹² See Payne Dec. at ¶ 61.

¹³ See Letter of March 14, 2010 [sic] from Kevin R. Wallace to Mayor Don Davidson (attached hereto as Exhibit 4).

GNP's proposed financing.¹⁴ As noted above, GNP has conceded that the first category of information – railroad operations costs – need not be protected as "Highly Confidential."¹⁵ The second category of information – GNP's proposed financing – was a reference to GNP's proposed investors, Wallace Properties. Thus, there is no basis to prohibit public officials in the region from seeing GNP's RRIF loan application, subject to the terms of the standard protective order prepared by Redmond and the County.

For these reasons and those discussed by Redmond and the County in earlier pleadings,¹⁶ the Board should approve GNP's Motions for Protective Orders but enter the form of order previously proposed by Redmond and the County and attached hereto as Exhibit 1.

March 22, 2011

Respectfully submitted,



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Attorneys for the City of Redmond, Washington

¹⁴ GNP filed a redacted copy of its RRIF loan application with the Board on October 27, 2010, as part of its first Motion for Protective Order.

¹⁵ See *supra* note 7.

¹⁶ See *supra* note 2.

**Case Title: GNP RLY, INC.--ACQUISITION AND OPERATION
EXEMPTION--REDMOND SPUR AND WOODINVILLE SUBDIVISION
Docket No. 35407 and
STB Docket Nos. AB-6 (Sub No. 463X and Sub No. 465X)
CERTIFICATE OF SERVICE**

<u>Filed By</u>	<u>Address</u>	<u>Email</u>	<u>Filed For</u>
1. Matthew Cohen	Stoel Rives Llp 600 University Street, Suite 3600 Seattle, WA 98101 Tel: 206-386-7569 Fax: 206-386-7500	Mcohen@Stoel.Com	City Of Redmond WA
2. Hunter Ferguson	Stoel Rives Llp 600 University Street, Suite 3600 Seattle, WA 98101 Tel: 206-386-7514	Hoferguson@Stoel.Com	
3. Charles A. Spitulnik W. Eric Pilsk Allison I. Fultz	Kaplan Kirsch & Rockwell Llp 1001 Connecticut Avenue, Nw. Suite 800 Washington, DC 20036 Tel: (202) 955-5600	cspitulnik@kaplankirsch.com epilsk@kaplankirsch.com afultz@kaplankirsch.com	King County, WA
4. Pete Ramels, Andrew Marcuse	Office of the Prosecuting Attorney Civil Division W400 King County Courthouse 516 Third Avenue Seattle, WA 98104 Tel:	pete.ramels@kingcounty.gov andrew.marcuse@kingcounty.gov	King County
5. John D. Heffner James H. M. Savage	Law Offices 1750 K Street, N.W., Suite 350 Washington, DC 20006 Tel: 202-296-3333 Fax: 202-296-3939	j.heffner@verizon.net jsavagelaw@aim.com	Gnp Rly Inc
6 Denis Law	City Of Renton 1055 S Grady Way Renton, WA 98057 Tel: 425-430-6500	by U. S. Mail	City Of Renton
7. Lawrence J. Warren	City of Renton PO Box 626 Renton, WA 98057 Tel: 425-430-6480	lwarren@rentonwa.gov	City of Renton
8. Isabel Safora Anne DeKoster	Port Of Seattle P. O. Box 1209 Seattle, WA 98111	safora.i@portseattle.org dekostcr.a@portseattle.org	Port Of Seattle
9. Kevin Sheys	Nossaman LLP 1666 K Street NW, Suite 500 Washington, DC 20006 Tel: 202-887-1420 Fax: 202-466-3215	ksheys@nosssaman.com	Port Of Seattle
10 Steve Sarkozy	City Of Bellevue P.O. Box 90012 Bellevue, WA 98009 Tel:	by U. S. Mail	City Of Bellevue
11 Kurt Triplett	City Of Kirkland 125 5Th Ave Kirkland, WA 98033 Tel:	by U. S. Mail	City Of Kirkland
12 Davit T. Rankin Kristy D. Clark	BNSF Railway PO Box 961039	david.rankin@bnsf.com kristy.clark@bnsf.com	BNSF

THE CITY OF REDMOND'S PETITION FOR LEAVE TO FILE A
SUPPLEMENTAL RESPONSE TO GNP'S TWO PENDING MOTIONS
FOR PROTECTIVE ORDERS - 8

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13 Karl Morell	Forth Worth, TX 76131-2828 Ball Janik LLP 1455 F Street NW, Suite 225 Washington, DC 2005 Tel: 202-638-3307 Fax: 202-783-6947	kmorell@ballp.com	BNSF Railway Co
14 Jordan Wagner	401 S. Jackson St. Seattle, WA 98104	jordan.wagner@soundtransit.org	Sound Transit
15 Andrea C. Ferster	Rails-To-Rails Trails Conservancy 2121 Ward Court, N.W., 5th Floor Washington, DC 20037	afferster@railstotrails.org	Rails-To-Rails Trails Conservancy
16 Jean M. Cerar	Issaquah Valley Trolley PO Box 695 Issaquah, WA 98027	info@issaquahhistory.org	Issaquah Valley Trolley
17 Mike Bates	Woodinville Lumber, Inc. 15900 Woodinville-Redmond Road NE Woodinville, WA 98072 Tel: 425-488-1818 Fax: 425-488-7409	by U. S. Mail	Woodinville Lumber, Inc.
18 Kathy Cox	Marketing Philharmonic 218 Main Street #668 Kirkland, WA 98033 Tel: 425-822-3925	by U. S. Mail	Marketing Philharmonic
19 Don Davis	Master Builders Association of King & Snohomish Counties 335 - 116th Avenue SE Bellevue, WA 98004 Tel: 425-451-7920 Fax: 425-646-5985	by U. S. Mail	Master Builders Association of King & Snohomish Counties
20 Dean Kattler	Waste Management of Washington, Inc. 13225 NE 126th Place Kirkland, WA 98034 Tel: 425-823-6164 Fax: 425-814-7866	by U. S. Mail	Waste Management, Inc.
21 Ernest F. Wilson	17509 NE 38th Court Redmond, WA 98052 Tel: 425-869-8899	ewilson@spiretech.com	Ernest F. Wilson
22 Paul Zimmer	Eastside Rail Now PO Box 3524 Bellevue, WA 98009 Tel: 425-646-8517	by U. S. Mail	Eastside Rail Now

THE CITY OF REDMOND'S PETITION FOR LEAVE TO FILE A
SUPPLEMENTAL RESPONSE TO GNP'S TWO PENDING MOTIONS
FOR PROTECTIVE ORDERS - 9

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I certify that I have sent to the parties of record as set forth above & obtained from the STB website, via email/pdf and/or via U. S. Mail the following: (1) Cover letter from Hunter Ferguson to Cynthia T. Brown, and (2). **The City Of Redmond's Petition For Leave To File A Supplemental Response To GNP's Two Pending Motions For Protective Orders.**



Cindy Castro, Legal Secretary
STOEL RIVES LLP

Dated: Tuesday, March 22, 2011

**THE CITY OF REDMOND'S PETITION FOR LEAVE TO FILE A
SUPPLEMENTAL RESPONSE TO GNP'S TWO PENDING MOTIONS
FOR PROTECTIVE ORDERS - 10**

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EXHIBIT 1

APPENDIX A

PROTECTIVE ORDER

1. For purposes of this Protective Order:
 - (a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.
 - (b) "Confidential Information" means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts, confidential financial and cost data, and other confidential or proprietary business or personal information.
 - (c) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraph 2 or 3 of this Protective Order, and any Confidential Information contained in such materials.
 - (d) "GNP" means GNP Rly, Inc.
 - (e) "Highly Confidential" means information or documents containing shipper-specific rate or cost data, trackage rights compensation levels, or other competitively sensitive or proprietary information.
 - (f) "King County" means King County, Washington.
 - (g) "Public Entity Party" means any of King County or any other party to this proceeding that is a state, local, or regional governmental entity or authority.

(h) "Proceedings" means those before the Surface Transportation Board ("the Board") concerning any directly related proceedings covered by STB Finance Docket No. 35407, Docket No. AB-6 (Sub-No. 463X) and Docket No. AB-6 (Sub-No. 465X), and any related proceedings before the Board, and any judicial review proceedings arising from the same or from any related proceedings before the Board.

(i) "STB" means the U.S. Surface Transportation Board.

2. If any Public Entity Party, as a party to these Proceedings, determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents or Highly Confidential Documents, then that party may designate and stamp such Confidential Information and Documents as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall be handled as provided for hereinafter.

3. If GNP as a party to these Proceedings, or any person acting on behalf and at the direction of GNP, determines that any part of a document he or she submits, discovery request he or she propounds, discovery response he or she produces, transcript of a deposition or hearing in which he or she participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents or Highly Confidential Documents, then such party may designate and stamp such Confidential Information and Documents as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL". Each

such party shall include with his or her information or documents a public certification to the Board describing the confidential nature of the information or documents so designated. Unless any Public Entity Party or the Board objects to such certification, any information or documents so designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall be handled as provided for hereinafter.

4. Information and documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Order.

5. In the event that a party determines that additional individuals need access to "Highly Confidential" documents, the party must notify the opposing party: (1) identifying the individual or individuals to whom the party would like to disclose "HIGHLY CONFIDENTIAL" documents, and (2) identifying the "HIGHLY CONFIDENTIAL" documents to be disclosed, after which the opposing party has 24 hours either to consent or to object to the additional disclosure. If the opposing party objects to the additional disclosure, the "HIGHLY CONFIDENTIAL" documents will not be disclosed until the objection is resolved either by agreement of the parties or by the STB.

6. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing a motion with the STB to adjudicate such challenges.

7. Designated Material received in discovery must be kept either in the office of outside counsel or in the office of the Counsel of any Public Entity Party, may not be copied, and may not be used for any purposes, including without limitation any business, commercial, or competitive purposes, other than the preparation and presentation of evidence and argument in the Proceedings, and/or any judicial review proceedings in connection with the Proceedings and/or with any related proceedings. Notwithstanding the foregoing, any Designated Material that was in the possession of any party or publicly available to any party prior to the commencement of this proceeding may be retained and used for the purposes for which it was received by or available to that Public Entity Party.

8. Any party who receives Designated Material in discovery shall return or destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the STB and retained by counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands. Notwithstanding the foregoing, any Designated Material that was in the possession of any party prior to the commencement of this proceeding or publicly available to any party may be retained and used for the purposes for which it was received by or available to that party and such Designated Materials need not be returned or destroyed.

9. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the STB unless the pleading or other document is submitted under seal pursuant to the rules of this Board.

10. No party may present or otherwise use any Designated Material at a hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits

and other documents containing or reflecting such Designated Material to the STB to whom relevant authority has been lawfully delegated by the STB, and has accompanied such submission with a written request that the STB: (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

11. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in this Protective Order.

12. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1 - 5 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of any relevant provision of the ICC Termination Act of 1995.

13. All parties must comply with all of the provisions of this Protective Order unless the STB determines that good cause has been shown warranting suspension of any of the provisions herein.

14. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

15. Information that is publicly available or obtained outside of these Proceedings from a person with a right to disclose it shall not be subject to this Protective Order even if the same information is produced and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in these Proceedings.

16. Any party filing with the Board a "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" pleading in these Proceedings shall simultaneously file a public version of the pleading.

EXHIBIT A

CONFIDENTIALITY UNDERTAKING

I, _____, have read the Protective Order served on _____, 2010, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 35407, Docket No. AB-6 (Sub-No. 463X) and Docket No. AB-6 (Sub-No. 465X), understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any documents or information marked as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35407, Docket No. AB-6 (Sub-No. 463X) and Docket No. AB-6 (Sub-No. 465X), before the Surface Transportation Board ("Board"), and/or any judicial review proceedings in connection with STB Finance Docket No. 35407, Docket No. AB-6 (Sub-No. 463X) and Docket No. AB-6 (Sub-No. 465X). I further agree not to disclose any Confidential Information, Confidential Documents, Highly Confidential Information, Highly Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that, at the conclusion of this Proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that a party which asserts the confidential interest shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach. I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking, but shall be in addition to all remedies available at law or equity.

Signed: _____

Position: _____

Affiliation: _____

Date: _____

EXHIBIT 2

The Honorable Brian D. Lynch

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In re

GNP RLY, INC.,

Alleged Debtor.

No. 11-40829-BDL

DECLARATION OF THOMAS PAYNE IN
SUPPORT OF MOTION FOR ORDER
REQUIRING PETITIONERS TO FILE
BOND

Thomas Payne declares as follows:

1. I am the Chairman, Chief Executive Officer, and Chief Operating Officer of GNP Rly, Inc (hereinafter "GNP"). I have personal knowledge of the facts stated in this declaration and am competent to testify to them.

2. On November 29, 2006, Altac Terminals Washington, Inc (hereinafter "Altac") was incorporated by Darryl Banman, Paul Crane and myself. I was a Director and President.

DECLARATION OF THOMAS PAYNE IN SUPPORT
OF MOTION FOR ORDER REQUIRING PETITIONERS
TO FILE BOND - 1

CROCKER LAW GROUP, P.L.L.C.

720 Olive Way, Suite 1000, Seattle, WA 98101
☎ 206-824-9894 ☎ 206-824-8598

www.crockerlaw.com

1 3. The Company investigated the possibility of establishing a railway based
2
3 import and export company for the export of grains and the import of various
4
5 commodities from China.
6

7
8 4. To accomplish this, I was charged with the responsibility of negotiating
9
10 with Gray's Harbor for a rail based import/export site, as well as the design of railway
11
12 facilities and a terminal to be located there.
13

14
15 5. Timing issues delayed the implementation of the project and the
16
17 agreements for a site location were not renewed when they were due for renewal in early
18
19 Spring of 2007.
20

21
22 6. After the windup of that proposal on April 10, 2007, I became the sole
23
24 Director, Officer and Shareholder of Altac.
25

26
27 7. In the Spring of 2007, I became aware that the Burlington Northern Santa
28
29 Fe railway company (hereinafter "BNSF") intended to sell the Woodinville subdivision
30
31 in a complex transaction to King County and/or the Port of Seattle (hereinafter "Port").
32

33 8. Around that same time, I was introduced to and met with a group of
34
35 businessmen from Bellevue and other communities on the Eastside of Lake Washington
36
37 who desired that the rail line be preserved for both "rails and trails." That effort was
38
39 principally led by James O'Farrell (hereinafter "O'Farrell") of Talisma Corporation and
40
41 All Aboard Washington.
42
43
44
45
46
47

DECLARATION OF THOMAS PAYNE IN SUPPORT
OF MOTION FOR ORDER REQUIRING PETITIONERS
TO FILE BOND - 2

CROCKER LAW GROUP, LLC

720 Olive Way, Suite 1000, Seattle WA 98101
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www.crockerlaw.com

1 9. After meeting with the Eastside businessmen, I agreed to personally work
2
3 with the group to determine if enough public support and interest could be raised to
4
5 ensure that the railway line was preserved for "rails and trails."
6
7

8 10. By September 2007, it became apparent that a railway company would
9
10 have to be formed to carry forward any plan to preserve the line of railway if it was sold
11
12 by BNSF.
13
14

15 11. As such, the name of the Altac corporation was changed to GNP on
16
17 September 10, 2007.
18

19 12. O'Farrell and I initiated discussions with various eastside businesses and
20
21 government agencies in order to gain support for the preservation of the railway for
22
23 future operations. A public information campaign was initiated to ensure that "rails and
24
25 trails" became the official policy of the purchaser.
26
27

28 13. In December 2007, the Port resolved to purchase the subdivision from
29
30 BNSF and the definitive purchase and sale agreements between the Port, King County
31
32 and BNSF were concluded in May of 2008, with the closing of the transaction scheduled
33
34 for December of that year.
35
36

37 14. The structure of the transaction provided that the northern (Freight)
38
39 portion of the line, between Snohomish and Woodinville would be kept in operation to
40
41 serve the existing freight customers on the line.
42
43
44
45
46
47

DECLARATION OF THOMAS PAYNE IN SUPPORT
OF MOTION FOR ORDER REQUIRING PETITIONERS
TO FILE BOND - 3

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1 15. The balance of the railway, south of Woodinville would be placed into the
2
3 "railbank" - a federally regulated scheme which provides that rail lines could be used on
4
5 an interim basis for a trail while still being preserved for reactivation as a railway.
6

7
8 16. A series of Orders issued by the Surface Transportation Board (hereinafter
9
10 "STB") approved the particular structure of the transaction.
11

12 17. In order for the transaction to proceed, BNSF undertook a competitive bid
13
14 for the selection of a Third Party Operator (hereinafter "TPO") for the freight segment
15
16 and a competitive bid was issued.
17

18
19 18. GNP applied to STB for a Certificate of Public Convenience and
20
21 Necessity in order to pursue the bid. That certificate was issued by STB in August 2008.
22

23 19. GNP was selected as the successful bidder for the TPO rights to acquire
24
25 the BNSF's permanent rail freight easement when the line was acquired by the Port from
26
27 the BNSF.
28

29 20. GNP and Ballard Terminal Railroad (hereinafter "BTR") agreed that BTR
30
31 would operate the freight services on the line as GNP's contracted agent and GNP
32
33 would bear the common carrier obligations.
34
35

36 21. GNP conducted substantially all negotiations with the BNSF, the Port, the
37
38 County of Snohomish; prepared all STB applications, concluded initial AAR accounting
39
40 arrangements, located initial prospective staff, and arranged for counsel to assist in the
41
42 same.
43
44
45
46
47

DECLARATION OF THOMAS PAYNE IN SUPPORT
OF MOTION FOR ORDER REQUIRING PETITIONERS
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1 22. The line's purchase and sale transaction successfully closed in December
2
3 2009.
4

5 23. GNP freight operations commenced on December 18, 2009, continuing
6
7 since.
8

9 24. In the meantime, O'Farrell informally advised that he had sold his shares
10
11 of the corporation to Douglas Engle (hereinafter "Engle") in September, 2009, leaving
12
13 50% of the shares held by me and 50% of shares held by Engle. No formal record of
14
15 notice of the sale or transfer has been received by the corporation.
16
17

18 25. Engle had been previously introduced to GNP by O'Farrell, who had a
19
20 long history with him and brought him on as a person capable of providing financial
21
22 analysis and planning as well as initial financing for the corporation in cooperation with
23
24 O'Farrell.
25
26

27 26. O'Farrell advised me at that time that Engle was "a weapon which was to
28
29 be used carefully." Unfortunately, O'Farrell's and my relationship with Engle proved to
30
31 be fractious.
32
33

34 27. Engle is highly erratic. It is not uncommon for him to have mood swings,
35
36 engage in unpredictable and threatening behavior, accompanied by extreme anger
37
38 outbursts and uncontrolled, unpredictable actions. This conduct would alternate with
39
40 abject apologies and promises of cooperation and undertakings to amend behavior -- none
41
42 of which has taken place.
43
44
45
46
47

DECLARATION OF THOMAS PAYNE IN SUPPORT
OF MOTION FOR ORDER REQUIRING PETITIONERS
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1 28. Conversations deteriorated to invective. O'Farrell and I found it
2
3 necessary, as a result of Engle's inappropriate conduct, to suspend Engle as an officer of
4
5 the corporation on May 15, 2009.
6

7
8 29. Thereafter, O'Farrell and Engle continued to seek financing for the
9
10 corporation through commercial sources.
11

12 30. In the meantime, I prepared an application for RRIF financing which was
13
14 accepted by the FRA.
15

16 31. In August 2009, GNP was notified to prepare for the closing of the
17
18 transaction, and Engle was directed to prepare the accounting system for commencement
19
20 of operations in December 2009.
21

22 32. A set of QuickBooks Accounting software was purchased, and the
23
24 creation of an accounting system in conformity with STB accounting rules was started. I
25
26 directed Engle to ensure that the system tracked each individual waybill and interchange
27
28 movement as the foundation of the system. Rail Car Management Inc. was engaged to
29
30 set up the requisite interchange settlement accounts as required by law and our
31
32 interchange agreements with BNSF.
33
34
35
36

37 33. Problems with the accounting system extended through the Spring of
38
39 2010.
40

41 34. Engle took over complete administration of the accounts in March 2010.
42
43 Revenue collections and billings went unperformed, resulting in cash crises.
44
45
46
47

DECLARATION OF THOMAS PAYNE IN SUPPORT
OF MOTION FOR ORDER REQUIRING PETITIONERS
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1 35. As such, Engle's activities were restricted to financial analysis and
2
3 accounting in March of 2010.
4

5 36. Since then: he has made unauthorized public appearances; appeared in a
6
7 state of impairment at a public meeting on behalf of GNP, and thereafter, confessed to
8
9 mixing prescription drugs with alcohol to impairment; repeatedly failed to follow
10
11 directions from proper authority in accordance with CFR 49; and failed to produce
12
13 accurate financial statements after one year's operations.
14
15

16 37. Attached as Exhibit A is a true and correct copy of letter from me to Engle
17
18 dated May 9, 2009.
19
20

21 38. Attached as Exhibit B is a true and correct copy of a letter from me to
22
23 Engle dated April 5, 2010
24
25

26 39. Attached as Exhibit C is a true and correct copy of a Memo to Engle's
27
28 personnel file dated October 10, 2010.
29
30

31 40. GNP Consultant Thomas Jones (hereinafter "Jones") and I initiated
32
33 discussions with Wallace Properties Development Company (hereinafter "WPDC") in
34
35 July 2010, with respect to leasing their siding in Redmond, Washington. Those
36
37 discussions eventually lead to their desire to assist in funding the railroad and resulted a
38
39 Memorandum of Understanding (hereafter "MOU"), which provides a mechanism for the
40
41 financing of the corporation and was signed on or about December 13, 2010.
42
43

44 41. Attached as Exhibit D is a true and correct copy of the MOU.
45
46
47

DECLARATION OF THOMAS PAYNE IN SUPPORT
OF MOTION FOR ORDER REQUIRING PETITIONERS
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1 42. The MOU outlines the terms and conditions, and intention of GNP and
2
3 WPDC to form a joint venture limited liability company to operate the railway.
4

5 43. Under the terms of the MOU, WPDC, through its members, is to form
6
7 Wallace Railway Properties, LLC (hereinafter "WRP").
8

9 44. Thereafter, WRP and GNP is to form a new entity – GNP Investor, LLC
10
11 (hereinafter "GNP Investor").
12

13 45. The MOU provides that GNP Investor will be issued 60 preferred shares
14
15 in GNP, each of which will be issued for each \$500,000 capital investment contribution.
16
17

18 46. The capital investment contributions are to be funded through GNP
19
20 Investor, which is ultimately responsible to provide commitments for \$30,000,000 in
21
22 capital contributions to GNP.
23

24 47. As a condition of the MOU, WPDC would make an initial contribution of
25
26 \$500,000 for the startup of GNP Investor.
27

28 48. The initial contribution of \$500,000 was on track to be paid out within one
29
30 month of this statement.
31

32 49. A Private Placement Memorandum, term sheet and presentation book
33
34 were to be prepared by mid January for initial circulation to private investors.
35
36

37 50. On January 24, 2011 while knowing that the cash on hand in the Bank of
38
39 America was \$13.23, Engle wrote a series of N.S.F. checks, some of which have cleared
40
41 and other stopped or returned, in the following amounts:
42
43

44 #3064 undated Joanne Engle \$700.00
45
46
47

DECLARATION OF THOMAS PAYNE IN SUPPORT
OF MOTION FOR ORDER REQUIRING PETITIONERS
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#3065	24 Jan. 11	Kroschel accounting	\$1363.50
	(Stopped)		
#3066	24 Jan. 11	Joanne Engle	\$1805.00
\$3067	24 Jan. 11	Douglas Engle	Unknown amt.
	(Stopped)		
#3068	24 Jan 11	Cox & Gracia	\$2327.35
	(Stopped)		

51. On January 24, 2011, GNP had a Board meeting. Present were Engle, Jones and myself.

52. During that meeting, Engle advised that GNP needed immediate restructuring or he could not continue as CFO. He further advised that he was seeking alternative employment.

53. The meeting was adjourned until January 26, 2011.

54. Meanwhile, the following day, Engle submitted to me in writing his reorganization or else ultimatum.

55. Attached as Exhibit E is a true and correct copy of Engle's ultimatum letter dated January 25, 2011.

56. On January 26, 2011, the GNP Board reconvened. At that meeting, Jones and I were presented with an agenda and document that was entitled "Bankruptcy Option" – interestingly enough, none of which are applicable to a railroad.

57. During the meeting, Engle was emphatic about there only being two options going forward for GNP: (1) bankruptcy; or (2) transfer of the entire company to Engle, which included his appointment as Chairman and CEO, and his becoming the majority shareholder.

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OF MOTION FOR ORDER REQUIRING PETITIONERS
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58. Engle further stated that should he assume control of the company, together with BTR, it would prevent a bankruptcy filing that would be otherwise imminent through his family and other alleged creditors, who were his friends and associates.

59. These alleged creditors include but are not limited to BTR, Marketing Philharmonic, San Clemente Technical Company, Joanne Engle, Earl Engle, and Kroschel Accounting Services.

60. Attached as Exhibit F is a true and correct copy of a termination letter from me to Engle dated January 26, 2011.

61. In the meantime, all work toward fulfilling the terms of the MOU has been suspended by WPDC as a result of Engle's attempted takeover through the involuntary bankruptcy petition.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 11th day of February, 2011.

/s/Thomas Payne
Thomas Payne

**DECLARATION OF THOMAS PAYNE IN SUPPORT
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EXHIBIT 3

The Seattle Times Winner of a 2010 Pulitzer Prize

Originally published Monday, March 14, 2011 at 10:40 PM

Wallace welcomes inquiry on GNP ties

Bellevue City Councilman Kevin Wallace said Monday night he welcomes a city investigation into his business dealings with a short-haul railroad, and he's confident he will be absolved of conflict-of-interest allegations.

By Keith Ervin

Seattle Times staff reporter

Bellevue City Councilman Kevin Wallace said Monday night he welcomes a city investigation into his business dealings with a short-haul railroad, and he's confident he will be absolved of conflict-of-interest allegations.

"These questions do need to be answered," Wallace said of City Manager Steve Sarkozy's plan to hire an outside investigator. "... I support the decision and I will cooperate with it."

When the investigation is done, he predicted, "it will be shown that there's been no conflict of interest" or improper behavior on his part.

Wallace said his December agreement to help GNP Railway raise \$30 million, expand its freight-rail operations and build passenger stations played no role in his long-standing desire to put Sound Transit light-rail trains on the same rail corridor on which GNP hopes to operate trains.

He said the "nonbinding" deal was focused on Redmond, not Bellevue, was contingent on his getting a legal opinion that it wouldn't pose a conflict of interest, and was terminated after GNP ran into financial difficulties that landed it in bankruptcy court.

But Wallace's words did little to dampen the furor over the agreement. Some of the 90 citizens who attended the meeting asked him to resign or recuse himself from future votes on light-rail routing.

Other citizens urged the council to broaden the outside investigation to look into what they said were conflicts involving council members Claudia Balducci and Grant Degginger.

City Attorney Lori Riordan said in response to questions from Balducci and Degginger that she previously looked into whether they had conflicts of interest and concluded they did not. She said she also had looked at other business interests of Wallace's and found they didn't constitute a conflict, either.

Critics of Balducci have suggested her votes on light rail might be improperly influenced by her membership on the Sound Transit board of directors or by her appointment by King County Executive Dow Constantine, a light-rail supporter, as director of county jails.

Degginger once represented Sound Transit in a legal case in Tacoma; and his firm, Lane Powell, continues to represent the transit agency in other issues outside Bellevue.

Mayor Don Davidson said during a break that the council appears to be split 3-3 on the scope of the investigation, and he doesn't want to be the tiebreaker on yet another split vote. "If I want healing, 4-3 votes are not good enough."

Council members Jennifer Robertson and John Chelminiak said Bellevue needs an ethics ordinance that would clarify the boundaries of appropriate behavior.

Robertson said accusations made by citizens and council members about conflicts of interest have been "corrosive to the public process." She also said she learned only on Wednesday that Riordan had issued written opinions on whether three council members had conflicts.

"It was not open and transparent," Robertson said. "I think that has led to a lot of lingering and festering of these allegations."

Chelminiak said he was troubled that Wallace told his colleagues at a February retreat that GNP intended to run trains to the Wilburton area of Bellevue but didn't disclose his relationship with the railway.

"It brings into question a lot of things," Chelminiak said to Wallace. "It brings into question some of your votes, frankly. It brings into question whether or not city staff ... was doing due diligence for your private company. If they were, it's really, really wrong."

Although Balducci doesn't have a conflict between her Bellevue and Sound Transit positions, Riordan said, a conflict could arise if the two entities find themselves in a legal battle.

Balducci, saying her appointment to the Sound Transit board was "no secret and it's nothing new," said she wants an investigation that focuses on "the recent revelations that have come out, because we need to regain the public trust."

Keith Ervin: 206-464-2105 or kervin@seattletimes.com

EXHIBIT 4

KEVIN R. WALLACE
Ph 425-802-5701 | Fx 425-646-3374
330 112th Ave. NE | Suite 200 | Bellevue, WA 98004

March 14, 2010

Mayor Don Davidson
City of Bellevue
450 110th Ave. NE
Bellevue, WA 98009

Dear Don:

As you know I have been an advocate for the B-7 light rail alignment since December 2008, before I ran for the Bellevue City Council. For more than two years I have argued that the B7 route is the best opportunity to bring light rail to the eastside in a way that protects South Bellevue neighborhoods. I hold that position today as strongly as I did in December 2008.

Last March, in writing about my proposal to use the abandoned Burlington Northern-Santa Fe right-of-way as the preferred East link alignment, a reporter said the "hostile, ad-hominem attacks show how emotional our local debate about transit remains." I think we are seeing those same emotions played out once again.

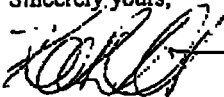
Over the last several weeks questions have again been raised about my motivations for advocating the B7 alignment. These latest allegations concern a non-binding Memorandum of Understanding my company entered into with GNP Railway last December to explore business opportunities related to the operation of the rail line. Our business focus was the rail connection between Redmond and Snohomish as Wallace Properties owns a Redmond industrial property with a rail spur that was leased to GNP Railway.

Any obligations we would have had under that MOU would not exist without a legal opinion examining any potential conflict of interest this arrangement would pose with my role as a Bellevue City Council member. Soon after the execution of the MOU, it became clear that the business opportunity would not materialize and the MOU was terminated.

I take my responsibilities as a member of this council very seriously and have always strived to conduct myself in a manner that upholds the principles of open and honest government. I believe I have done so in this matter.

However, questions have once again been raised about a potential conflict of interest. I believe these questions need to be answered just as publically as they have been raised. The city has indicated that it will bring in someone from outside government to review this matter and provide guidance to the council on a range of issues related to potential conflicts. I support that effort and will cooperate fully.

Sincerely yours,



Kevin Wallace

cc: Steve Sarkozy, City Manager
Lori M. Riordon, City Attorney